



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/166875

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 25, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Sheboygan County Department of Human Services in regard to Medical Assistance, a hearing was held on July 22, 2015, at Sheboygan, Wisconsin.

The issue for determination is whether Petitioner was overpaid BadgerCare+ benefits

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Mitch Birkey

Sheboygan County Department of Human Services  
3620 Wilgus Ave  
Sheboygan, WI 53081

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.
2. Petitioner was sent 2 BadgerCare+ overpayment notices; the first, dated June 29, 2015, informed Petitioner that she had been overissued BadgerCare+ benefits in the amount of \$800.63 for the period from January 1, 2014 through March 31, 2014 for failing to report earned income. That notice was later amended and the overpayment reduced to \$760.43 (claim number [REDACTED]). The second notice informed Petitioner that she had been overissued BadgerCare+ benefits in the amount of \$1112.50 for the period of October 1, 2014 through December 31, 2014. This overpayment was later rescinded in its entirety.

3. The remaining overpayment of \$760.43 is alleged to have occurred because Petitioner failed to report employment and income. When the agency noted a discrepancy between the reported household income and a wage crossmatch, Petitioner was asked to verify income for the time involved. The employer would not provide that information to Petitioner or the agency. The agency then used the unreported wages for that quarter and averaged them over the 3 months.
4. The overpayment consists of the capitation payment made by the State to the provider as well as fee for Medicaid services paid by the State for Petitioner's 2 children.

### DISCUSSION

Eligibility and premium requirements depend upon total household income. *See Wis. Stat. § 49.471(1)(f)*. During the period of the alleged overpayment, adults generally could not receive benefits if their household's income exceeded 200% of the federal poverty level. This limit generally did not apply to children. *Wis. Stat. § 49.471(4)(a)*. However, adults in households with income that exceeded 150% of the FPL prior to July 2012 and 133% of the FPL after that had to pay a premium. Premiums were not assessed for children until household income exceeded 200% of the Federal Poverty Level. *Wis. Stat. § 49.471(10)(b)*; *BadgerCare Plus Handbook, 19.1 - release 13-02, effective October 25, 2013*.

The Department may recover any overpayment of medical assistance that occurs because of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665 [BadgerCare].
  2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
  3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.
- Wis. Stat. § 49.497(1)*.

During the period relevant here all medical assistance recipients were required to report certain changes to the agency within 10 days. *Wis. Admin. Code, § DHS § 104.02(6)*. Those receiving BadgerCare Plus had to report changes in income when the income reached any of the following levels:

- 100% FPL
- 133% FPL
- 150% FPL
- 185% FPL
- 200% FPL
- 250% FPL
- 300% FPL
- 350% FPL
- 400% FPL

*BadgerCare+ Eligibility Handbook, § 27.3 - release 13-02, effective 10/1/13*.

This overpayment is for benefits paid for Petitioner's children. As there was no income limit for BadgerCare+ coverage for children at the time involved here the recoverable amount of an overpayment for children is limited to premiums that were not paid. *See BadgerCare+ Eligibility Handbook, §§16.1 and 28.4.2, release 13-02*.

I cannot sustain the overpayment. I cannot duplicate the agency work here. Income for the household beyond the quarterly wage match is not provided, the overpayment seems to include payment for services for children instead of just premiums and the records do not even reflect the household size so that the

appropriate FPL can be determined. I cannot match the FPL noted on agency exhibit # 4-C2 to any group size or FPL amount for any time period. There is no Notice of Decision informing Petitioner of the reporting requirements. In short, the evidence is just too conclusory and cryptic to confirm the overpayment.

### CONCLUSIONS OF LAW

That the agency has not presented evidence sufficient to demonstrate that the overpayment claim # [REDACTED] is correct.

**THEREFORE, it is**

### ORDERED

That this appeal is remanded to the agency with instructions to rescind the overissuance represented by claim # [REDACTED]. This must be done within 10 days of the date of this decision.

### REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 2nd day of October, 2015

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 2, 2015.

Sheboygan County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability